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SUBJECT: MONTENEGRO DEBATES NEW CONSTITUTION

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¶11. SUMMARY: THE GOVERNMENT AND PARLIAMENT OF MONTENEGRO ARE SEIZED WITH THE NECESSITY OF DRAFTING AND ADOPTING A NEW CONSTITUTION, FOLLOWING MONTENEGRO'S RE-EMERGENCE AS AN INDEPENDENT STATE LAST JUNE. THE GOVERNMENT AND OPPOSITION ALIKE ARE AIMING AT A "CONSENSUS" TEXT WHICH COULD GAIN AT LEAST 2/3 SUPPORT IN THE 81 SEAT PARLIAMENT, IN A VOTE POSSIBLY LATER THIS SPRING. THE COUNCIL OF EUROPES VENICE COMMISSION IS PROVIDING SIGNIFICANT OUTSIDE EXPERTISE ON THE TEXT. KEY POINTS OF CONTENTION ARE TREATMENT OF NATIONALITY, LANGUAGE, AND RELIGION. END SUMMARY.

LEGITIMACY OF CONSTITUTIONAL ADOPTION PROCESS

¶12. AFTER INDEPENDENCE ON JUNE 3, 2006, MONTENEGRO BEGAN TO CONSIDER A NEW CONSTITUTION TO REPLACE THE 1992 "MILOSEVIC-ERA" CONSTITUTION. AN "EXPERT" DRAFT PRESENTED ON SEPTEMBER 8 HAS BEEN USED AS THE STARTING POINT BY THE PARLIAMENTARY COMMITTEE ON CONSTITUTIONAL AFFAIRS. THE CONSTITUTIONAL COURT REJECTED MOTIONS LODGED BY OPPOSITION PARTIES CHALLENGING BOTH THE STATUS OF THE CONSTITUENT ASSEMBLY (NOTE: UNDER A LAW PASSED AFTER INDEPENDENCE, THE REPRESENTATIVES ELECTED ON SEPTEMBER 10 WERE ELECTED TO COMprise BOTH A CONSTITUENT ASSEMBLY AND A REGULAR PARLIAMENT. END NOTE.) AND THE LAW ON PROCEDURE FOR ADOPTION AND PROCLAMATION OF THE CONSTITUTION, SO THE PARLIAMENT'S FULL CAPACITY TO ADOPT THE NEW CONSTITUTION IS NO LONGER IN DISPUTE. THE LAW STIPULATES THAT IF LESS THAN 2/3 OF PARLIAMENT VOTE FOR THE DRAFT CONSTITUTION, IT MUST BE PUT FORWARD IN A REFERENDUM WITH A 50 PERCENT VOTE NEEDED FOR ADOPTION.

CURRENT DISCUSSIONS AND CONTENTIOUS ISSUES

¶13. FOLLOWING REJECTION OF THEIR MOTIONS BY THE CONSTITUTIONAL COURT, OPPOSITION PARTIES IN MID-JANUARY ENDED THEIR BOYCOTT OF THE PARLIAMENTARY COMMITTEE ON CONSTITUTIONAL AFFAIRS. THE COMMITTEE AGREED ON THE STRUCTURE OF THE FUTURE CONSTITUTION:

1) SEPARATION OF POWERS AND ORGANISATION OF THE STATE;

2) HUMAN AND MINORITY RIGHTS; AND

3) ECONOMIC SYSTEM AND FINANCE.

VERY POSITIVELY, NO PARTY OR FACTION IS SEEKING TO USE THE CONSTITUTIONAL DEBATE TO RE-OPEN LAST MAY'S DECISION BY THE MONTENEGRIN ELECTORATE TO DECLARE INDEPENDENCE. THERE IS ALSO A BROAD CONSENSUS ON KEY CONSTITUTIONAL ISSUES SUCH AS THE FORM OF GOVERNMENT, SEPARATION OF POWERS, PROTECTION OF HUMAN RIGHTS, AND TREATMENT OF MINORITIES. CONSEQUENTLY, MOST POLITICAL LEADERS HAVE TOLD POST THAT THEY SEE THE CONSTITUTION AS 80 PERCENT (THE VIEW OF THE OPPOSITION SOCIALIST PEOPLES PARTY) TO EVEN 95 PERCENT (SPEAKER KRIVOKAPIC) COMPLETE, LEAVING ONLY A FEW MATTERS OF CONTENTION.

¶4. UNFORTUNATELY, THE MOST CONTENTIOUS ISSUES IN THE NEW CONSTITUTION TOUCH ON ETHNIC IDENTITY AND SYMBOLISM -- INCLUDING LANGUAGE, RELIGION, STATE FLAG AND ANTHEM -- WITH THE KEY DICHOTOMY BEING SERBIAN AND MONTENEGRIN. THERE IS NO DEBATE TO DATE OVER THE NEED TO RECOGNIZE ALBANIAN ETHNICITY AND LANGUAGE. SEVEN RECOMMENDATIONS FROM THE COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY (COE/PACE -- SEE LIST PARA 5), INCLUDING ONE TO HAVE THE CONSTITUTION DEFINE MONTENEGRO AS A "CIVIC STATE" (I.E., NOT ONE FORMED OF "CONSTITUENT PEOPLES" -- MONTENEGRINS, SERBS, ALBANIANS, BOSNIACS, CROATS, ETC.) WERE ADOPTED BY MOST PARLIAMENTARY PARTIES ON FEBRUARY 8. HOWEVER, REJECTION OF THE "CIVIC" PROPOSAL BY THE "SERBIAN LIST" - HEADED BY ANDRIJA MANDIC, THE INFORMAL LEADER OF THE PARLIAMENTARY OPPOSITION, AND THE BY THE SMALL "BOSNIAC PARTY", POINT TO FURTHER DISPUTES BASED IN HOW THE CONSTITUTION SHOULD ACCOUNT FOR ETHNICITY.

COUNCIL OF EUROPE RECOMMENDATIONS

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¶5. ON JANUARY 23, 2007, THE POLITICAL COMMITTEE OF THE COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY DELIVERED A LIST OF MINIMUM REQUIREMENTS TO BE INCORPORATED INTO THE NEW CONSTITUTION IN ORDER FOR MONTENEGRO TO BECOME A MEMBER STATE OF THE COUNCIL OF EUROPE. THE REQUIRED ARTICLES ARE:

- 1) CIVIC STRUCTURE OF THE STATE;
- 2) ELIMINATION OF THE DECISIVE ROLE OF POLITICIANS IN THE PROCESS OF APPOINTING JUDGES AND PROSECUTORS;
- 3) PROSECUTORS SHOULD NOT REPRESENT THE STATE IN CIVIL CASES;
- 4) PROTECTION OF HUMAN RIGHTS TO BE GUARANTEED AT A LEVEL NO LESS THAN THAT IN THE "SMALL CHARTER" OF THE FORMER STATE UNION OF SERBIA AND MONTENEGRO;
- 5) TERMINATION OF CAPITAL PUNISHMENT;
- 6) REGULATING THE STATUS OF ARMED/SECURITY FORCES AND INTELLIGENCE SERVICES AND THEIR PARLIAMENTARY OVERSIGHT; AND 7) CIVILIAN COMMANDER-IN-CHIEF OF MILITARY FORCES.

THE COE'S VENICE COMMISSION ON CONSTITUTIONAL REFORM WILL REMAIN ENGAGED IN THE PROCESS AS WELL, AND HAS APPOINTED TWO RAPPORTEURS TO WORK WITH THE PARLIAMENT ON THE TEXT.

¶6. COMMENT. DISAPPOINTINGLY BUT NOT SURPRISINGLY, MONTENEGRIN POLITICIANS ARE FOCUSING DEBATE ON ISSUES OF TIMES PAST. THE GOOD NEWS IS THAT REQUIREMENTS IN SUPPORT OF INTEGRATION INTO EURO-ATLANTIC STRUCTURES ARE, FOR THE MOST PART, NON-CONTROVERSIAL. THE "CIVIC STATE" ISSUE IS ONE THAT MONTENEGRO'S SERB NATIONALISTS - A FAIRLY PLACID BUNCH BY REGIONAL STANDARDS - HAVE STAKED OUT. HOWEVER, IT IS ALMOST CERTAINLY NOT A DEAL BREAKER EVEN IF THEY FAIL TO BACK DOWN, SINCE IT IS POSSIBLE TO GET A 2/3 MAJORITY IN THE 81-SEAT PARLIAMENT WITHOUT THE SERBIAN LIST'S 12 VOTES; E.G., THE PARTIES ADOPTING THE COE REQUIREMENTS REPRESENTED 67 MPS - ALMOST 83 PERCENT OF THE ASSEMBLY. ISSUES RELATED TO THE JUDICIARY HAVE SO FAR NOT BEEN A MAJOR STICKING POINT, BUT MAY PROVE MORE DIFFICULT TO RESOLVE AS THE PROCESS CONTINUES. END COMMENT.

BARNES